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March 1, 2012

The Honorable Jocelyn Boyd
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a
AT&T Southeast d/b/a AT&T South Carolina v. Halo Wireless, Incorporated for
Breach of the Parties' Interconnection Agreement
Docket No. 2011-304-C

Dear Ms. Boyd:

Enclosed for filing is AT&T South Carolina's Response to Halo's First Notice of Supplemental Authority in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of this pleading as indicated on the attached Certificate of Service.

Sincerely,

A handwritten signature in black ink that reads "Patrick W. Turner". The signature is written in a cursive, flowing style.

Patrick W. Turner

PWT/nml
Enclosure
cc: All Parties of Record
1026278

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

In Re: Complaint and Petition for Relief of)	
BellSouth Telecommunications, LLC d/b/a AT&T)	
Southeast d/b/a AT&T South Carolina v. Halo)	Docket No. 2011-304-C
Wireless, Inc. for Breach of the Parties')	
Interconnection Agreement)	

**AT&T SOUTH CAROLINA'S RESPONSE TO HALO'S
FIRST NOTICE OF SUPPLEMENTAL AUTHORITY**

Like each of its previous submissions, Halo's most recent filing is all about delay. The reason is no mystery: Halo's nationwide access charge avoidance scheme nets Halo illicit profits every day at the expense of AT&T South Carolina and dozens of other carriers, and it will continue to do so until Halo is stopped.¹ The Federal Communications Commission recently renounced access charge avoidance schemes like Halo's in general,² and, identifying Halo by name, the FCC specifically rejected Halo's attempt to justify the conduct that AT&T South Carolina challenges here.³ But Halo will be stopped only when this and other State commissions authorize AT&T South Carolina and its affiliates to terminate service to Halo,⁴ and that cannot happen if the proceedings are on hold.

This is why Halo has not missed a trick in its quest to block or delay state commission proceedings – first by filing for bankruptcy and claiming, erroneously, that this stayed all state

¹ The testimony that AT&T South Carolina filed on February 24, 2012, explains Halo's scheme, and why it must be brought to a halt as soon as possible.

² See Direct Testimony of J. Scott McPhee at 5, lines 1-10.

³ See *id.* at 17, line 1, to 18, line 26.

⁴ The one state commission that has considered the matter authorized AT&T to discontinue service to Halo in Tennessee, and AT&T has done so. See Direct Testimony of Mark Neinast at 5, lines 7-14.

commission proceedings; then, when the bankruptcy court told Halo it was wrong, asking the bankruptcy court, and then the federal district court, and then the Fifth Circuit, to stay the bankruptcy court's decision.⁵ All those courts refused, so Halo now asks this Commission to abate this proceeding – which, except for the name (“abatement” instead of “stay”) is the very remedy that three federal courts have denied. This Commission should not countenance Halo's back-door attempt to effectively undo the decisions of three federal courts that rejected Halo's requests to stay state commission proceedings while the Fifth Circuit decides Halo's appeal. Indeed, the refusal of the three federal courts to grant Halo's requests for stay effectively authorized this Commission to proceed while the appeal is pending.

Furthermore, Halo's request to delay a decision on the merits in this proceeding is based on a false premise. Halo asserts that if the Fifth Circuit reverses the bankruptcy court's decision, any action taken by this Commission would be “void *ab initio*.” See Halo's First Notice of Supplemental Authority, ¶ 4. But Halo offers *no authority* for that assertion (*see id.*), and Halo is simply wrong: If the Fifth Circuit were to reverse the bankruptcy court decision, the result would be a remand to the bankruptcy court for further proceedings – proceedings in which the bankruptcy court would be required to determine if “cause” exists to lift or modify the automatic stay so that the regulatory proceedings may continue during the pending bankruptcy proceeding. See 11 U.S.C. §362(d)(1).

In fact, Halo has it exactly backwards. If this Commission issues a decision in this proceeding before the Fifth Circuit decides Halo's appeal, that decision will stand, even if the

⁵ See AT&T South Carolina's Response to Halo's Partial Motion to Dismiss (Feb. 2, 2012), at 2-3.

Fifth Circuit were to subsequently reverse the bankruptcy court's ruling.⁶ For example, in *Scruggs v. Lowman (In re Scruggs)*, the bankruptcy court granted a request to lift the automatic stay to allow a state court proceeding to proceed during the pending bankruptcy case. 392 F.3d 124 (5th Cir. 2004). The bankruptcy court's decision to lift the automatic stay was appealed. *See id.* at 127. The state court issued a final judgment, which became final and no longer appealable before the intermediate appellate court rendered its decision on appeal. *See id.* The Fifth Circuit concluded that because the state court's judgment became final and no longer appealable before a decision was made on appeal, the "case or controversy between the parties had ceased to exist as a matter of law. Under the doctrine of mootness, this deprived the [appellate] court of jurisdiction, making its order reversing the Bankruptcy Court void *ab initio*." *See id.* at 130. Thus, this Commission need not be concerned that a decision it renders in this proceeding might be rendered void by a subsequent Fifth Circuit reversal of the bankruptcy court's decision.

WHEREFORE, for the foregoing reasons, AT&T South Carolina respectfully requests that the Commission reject Halo's suggestion that this proceeding be abated and, instead, proceed to a hearing on the merits under the existing procedural schedule.

⁶ In considering Halo's posturing about its prospects in the Fifth Circuit, AT&T South Carolina respectfully requests that the Commission keep in mind that this is the same entity that persistently and adamantly asserted that its position is fully supported by FCC rulings, only to have the FCC flatly state that Halo is wrong. *See* McPhee Direct at 17, line 1, to 18, line 26.

Respectfully submitted this 1st day of March, 2012.

BELLSOUTH TELECOMMUNICATIONS, LLC
d/b/a AT&T SOUTHEAST d/b/a AT&T SOUTH
CAROLINA



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STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina (“AT&T”) and that she has caused AT&T South Carolina’s Response to Halo’s First Notice of Supplemental Authority in Docket No. 2011-304-C to be served upon the following on March 1, 2012:

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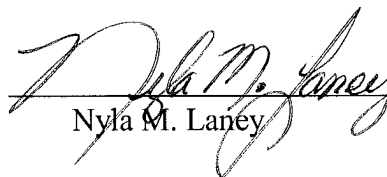
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